

November 26, 2012

## SUMMARY

TX Mobile, LLC requests designation as an eligible telecommunications carrier (“ETC”), pursuant to Section 214(e)(6) of the Communications Act of 1934 (Act), as amended, and Section 54.202 of the Rules of the Federal Communication Commission (“Commission”), for the limited purpose of receiving Lifeline Universal Service Support in the States of Alabama, Connecticut, Delaware, Florida, New Hampshire, New York, North Carolina, Tennessee, the Commonwealth of Virginia, and District of Columbia (hereafter “requested States”). The requested States have all stated that they lack jurisdiction over wireless service providers and, consequently, Commission review and approval of TX Mobile’s petition is appropriate.

As described in greater detail herein, TX Mobile satisfies all of the requirements for designation as an ETC and is committed to complying with all of the Commission’s rules and requirements for ETCs providing Lifeline services. Grant of ETC status will be in the public interest as TX Mobile’s provision of Lifeline-supported services will further the Commission’s goals of the Lifeline program by increasing the service options available to low-income consumers. Designation of TX Mobile as an ETC will provide consumers with a valuable alternative for obtaining telephone service and the increased competition TX Mobile’s entry into the market will provide should spur other service providers to improve their service offerings to low-income consumers.

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**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of

Telecommunications Carriers Eligible to  
Receive Universal Service Support

Petition of TX Mobile, LLC for  
Limited Designation as  
An Eligible Telecommunications Carrier  
Pursuant to Section 214(e)(6) of the  
Communications Act In the States of Alabama,  
Connecticut, Delaware, Florida, New Hampshire,  
New York, North Carolina, Tennessee,  
And the Commonwealth of Virginia,  
And District of Columbia

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WC Docket No. 09-197

**TX MOBILE, LLC  
PETITION FOR LIMITED DESIGNATION AS AN ELIGIBLE  
TELECOMMUNICATIONS CARRIER IN ALABAMA, CONNECTICUT,  
DELAWARE, THE DISTRICT OF COLUMBIA, FLORIDA, NEW HAMPSHIRE,  
NEW YORK, NORTH CAROLINA, TENNESSEE, AND VIRGINIA**

Comes now, TX Mobile, LLC (“TX Mobile” or “the Company”), and pursuant to Section 214(e)(6) of the Communications Act of 1934 (Act), as amended,<sup>1</sup> and Section 54.202 of the Rules of the Federal Communication Commission (“Commission”),<sup>2</sup> respectfully petitions the Commission for limited designation as an eligible telecommunications carrier (“ETC”) in the States of Alabama, Connecticut, Delaware, Florida, New Hampshire, New York, North Carolina, Tennessee, the Commonwealth of Virginia, and District of Columbia (hereafter “requested

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<sup>1</sup> 47 U.S.C. § 214(e)(6).

<sup>2</sup> 47 C.F.R. § 54.202.



States”) for the sole purpose of receiving Lifeline Universal Service Support. TX Mobile does not request ETC status for the purpose of receiving support from any other Universal Service Fund (“USF”) programs, nor does it seek support from the Link Up program.

TX Mobile is a common carrier as is required by 47 C.F.R. § 214(e)(1) and P.U.C. SUBST. R. 26.418(c), as that term is defined by 47 U.S.C. § 153(10) and 47 C.F.R. § 20.9(a)(7). TX Mobile is a common carrier by law as a reseller of wireless telecommunications services pursuant to 47 C.F.R. § 20.9(a)(10) which provides that mobile satellite service involving the provision of commercial mobile radio service (by licensees or resellers) directly to end users shall be treated as common carriage services. The Company will be providing the required services, at least in part, as a reseller. CMRS resellers like TX Mobile Wireless are treated as common carriers for regulatory purposes.

Section 214(e)(2) of the Act reserves to state public utility commissions the authority to designate ETC status to requesting entities.<sup>3</sup> However, Section 214(e)(6) permits the FCC to designate a petitioner as an ETC in cases involving a "common carrier providing telephone exchange service and exchange access that is not subject to the jurisdiction of a State commission."<sup>4</sup> The FCC has stated that before it will consider an ETC application, the entity seeking ETC status must demonstrate that it "is not subject to the jurisdiction of a state commission"<sup>5</sup> and that the entity must provide an "affirmative statement" from the relevant state commission that the carrier is not subject to the state commission's jurisdiction.<sup>6</sup> As

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<sup>3</sup> 47 U.S.C. § 214(e)(2).

<sup>4</sup> 47 U.S.C. § 214(e)(6).

<sup>5</sup> See *Procedures for FCC Designation of Eligible Telecommunications Carriers Pursuant to Section 214(e)(6) of the Communications Act*, 12 FCC Rcd 22947 (1997).

<sup>6</sup> See *Federal-State Joint Board on Universal Service; Promoting Deployment and Subscribership in Unserved and Underserved Areas, Including Tribal and Insular Areas*, 155 FCC Rcd 12208 ¶7 (2000).

demonstrated in the documents attached as Exhibit A, the Federal Jurisdiction States have affirmatively stated that they lack jurisdiction or will not assign ETC status to commercial mobile radio service ("CMRS") providers. Accordingly, the Commission has jurisdiction, pursuant to Section 214(e)(6) to review and grant the Company's request for designation as an ETC in the Federal Jurisdiction States. Therefore, pursuant to Section 214(e)(6) of the Act, the Commission shall review the Company's request for ETC designation in these jurisdictions.<sup>7</sup>

## **I. ABOUT TX MOBILE, LLC**

TX Mobile is a Texas limited liability company, with headquarters in Houston, Texas. Thuy Nguyen is TX Mobile's only member and sole manager. Hung Do is the Company's President. TX Mobile is an affiliate company of HTH Communications, LLC, an experienced provider of wireless handsets. Hung Do is also President of HTH Communications, LLC. The Company has not currently been granted ETC status in any jurisdiction but has an ETC application pending in Texas.

TX Mobile is not currently providing telecommunication services of any kind to any customers. TX Mobile will provide commercial mobile radio service ("CMRS") to consumers throughout the requested service area. TX Mobile will provide prepaid wireless telecommunications services to consumers by using the Sprint Nextel ("Sprint") wireless network and other national facilities-based networks on a wholesale basis to offer nationwide service. TX Mobile will obtain from its underlying carrier the network infrastructure and wireless transmission facilities to allow TX Mobile to operate as a Mobile Virtual Network Operator ("MVNO").

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<sup>7</sup> See *Federal-State Joint Board on Universal Service; Promoting Deployment and Subscribership in Unserved and Underserved Areas, Including Tribal and Insular Areas*, 15 FCC Rcd 12208 (2000).

The Company is seeking to avail itself of the Commission's conditional grant of forbearance from the Act's "owned-facilities" requirement.<sup>8</sup> Therefore, TX Mobile has filed a Compliance Plan with the Commission's Wireline Competition Bureau in accordance with the directive of the Commission's *Lifeline Reform Order*.<sup>9</sup> The Compliance Plan contains very detailed information about the Company and is incorporated herein by reference. (See Exhibit B.)

## **II. TX MOBILE SATISFIES THE COMMISSION'S REQUIREMENTS FOR DESIGNATION OF ETCs**

Section 54.2.2 of the Commission's rules outlines the requirements that must be met before a carrier can be designated as an ETC by the FCC. TX Mobile meets these requirements and should be granted ETC designation in the requested States.

### **A. TX Mobile is a Common Carrier**

Providers of wireless services are treated as common carriers for regulatory purposes. Section 332(c)(1)(A) of the Act states that CMRS providers will be regulated as common carriers.<sup>10</sup> TX Mobile will provide mobile telecommunications services and, accordingly, is a common carrier, as required by 54.201(b) of the Commission's rules.<sup>11</sup>

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<sup>8</sup> See *Lifeline and Link Up Reform and Modernization, Lifeline and Link Up, Federal-State Board on Universal Service, Advancing Broadband Availability through Digital Literacy Training*, 26 FCC Rcd 6656 WC Docket No. 11-42 *et al.*, Adopted January 31, 2012 and Released February 6, 2012 ("*Lifeline Reform Order*"); see also 47 U.S.C. § 214(e)(1)(A).

<sup>9</sup> *Id.*; also see *Wireline Competition Bureau Provides Guidance for the Submission of Compliance Plans Pursuant to the Lifeline Reform Order*, Public Notice, DA 12-314 (rel. Feb. 29, 2012).

<sup>10</sup> See 47 U.S.C. § 332(c)(1)(A).

<sup>11</sup> See 47 C.F.R. § 54.201(b).



## **B. “Own facilities” Requirement**

To be eligible for federal universal service support, the Act provides that an ETC must offer the services supported by federal universal service support mechanisms throughout a service area “either using its own facilities or a combination of its own facilities and resale of another carrier’s services.”<sup>12</sup> However, the Commission has decided to “forbear, on [its] own motion, from applying the Act’s facilities requirement of section 214(e)(1)(A) to all telecommunications carriers that seek limited ETC designation to participate in the Lifeline program, subject to certain conditions.”<sup>13</sup> The Company commits to satisfaction of these conditions. To this end, TX Mobile has submitted for review, on October 18, 2012, a Compliance Plan (itself a condition to grant of forbearance), which meets the requirements of the *Lifeline Reform Order*<sup>14</sup> and details how the Company is satisfying these conditions.<sup>15</sup> The Compliance Plan contains very detailed information about the Company and is incorporated herein by reference. (See Exhibit B.) Consequently, TX Mobile is not required to meet the “own facilities” requirement of Section 214(e)(1)(A).

## **C. Certification**

Section 54.202(a)(1) states that in order to be designated an ETC under section 214(e)(6), any common carrier in its application must certify that it will comply with the service

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<sup>12</sup> See 47 U.S.C. § 214(e)(1)(A).

<sup>13</sup> See *Lifeline Reform Order*, ¶ 368.

<sup>14</sup> See *Lifeline Reform Order*, ¶ 368.

<sup>15</sup> *Id.*



requirements applicable to the support that it receives.<sup>16</sup> TX Mobile certifies that it will provide Voice Telephony services eligible for support by federal universal service support mechanisms.<sup>17</sup>

TX Mobile's services will include voice telephony services that provide voice grade access to the public switched network or its functional equivalent. Further, TX Mobile's service offerings will provide its customers with minutes of use for local service at no charge to the customer. TX Mobile's Lifeline offerings are outlined in its Compliance Plan, attached hereto as Exhibit B.

In addition to free voice services, TX Mobile's Lifeline plan offerings will include a free handset and free custom calling features, including voicemail, caller ID, and call waiting. All plans will include domestic long-distance at no additional per-minute charge. The Company will also provide access to emergency services provided by local government or safety officials, including 911 and E911 where available and will comply with any Commission requirements regarding E911-compatible handsets. TX Mobile will also comply with the Commission's forbearance grant conditions relating to the provision of 911 services and handsets.

Finally, TX Mobile will not provide toll limitation service. The Company, like most wireless carriers, does not differentiate domestic long-distance toll usage from local usage and all usage is paid for in advance. Pursuant to the *Lifeline Reform Order*, subscribers to such services are not considered to have voluntarily elected to receive TLS.<sup>18</sup>

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<sup>16</sup> See 47 C.F.R. § 54.202(a)(1)(i); see also 47 U.S.C. § 214(e)(1)(A).

<sup>17</sup> See 47 C.F.R. § 54.101(a).

<sup>18</sup> See 47 C.F.R. § 54.202(a)(2).

#### **D. Advertising**

The Company commits to advertising the availability of its Lifeline services, and the charges for such, using media of general distribution,<sup>19</sup> and in a manner reasonably designed to reach those likely to qualify for the service.<sup>20</sup> Examples of TX Mobile's advertising are in its Compliance Plan.<sup>21</sup> TX Mobile will ensure that all of its Lifeline advertising materials comply with the Commission's revised rule section 54.405(c). The Compliance Plan contains very detailed information about the Company and is incorporated herein by reference. (See Exhibit B.)

#### **E. Geographic Service Area**

The Company requests ETC designation for its entire service area in the States.

#### **F. Five-Year Plan**

The Company is a common carrier seeking designation as an ETC in order to provide supported services only under subpart E, Universal Service Support for Low-Income Consumers, of Part 54 of the Code of Federal Regulations and does not need to submit a five-year plan.<sup>22</sup>

#### **G. Ability to Remain Functional in Emergency Situations**

TX Mobile resells the services of its underlying carrier, Sprint. The Company is relying on Sprint's ability to remain functional in emergency situations, including the ability to: ensure

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<sup>19</sup> See 47 U.S.C. § 214(e)(1)(B).

<sup>20</sup> See 47 C.F.R. § 54.405(b)

<sup>21</sup> The Commission has stated that carriers have six months from the effective date of the Lifeline Reform Order to implement the disclosures required by Rule 54.405(c). See *Lifeline Reform Order*, ¶ 276.

<sup>22</sup> See 47 C.F.R. § 54.202(a)(1)(ii).

functionality without an external power source by maintaining a reasonable amount of back-up power; reroute traffic around damaged facilities; and manage traffic spikes resulting from emergency situations, to comply with the requirement that the Company demonstrate its ability to remain functional in emergency situations.<sup>23</sup>

#### **H. Consumer Protection and Service Quality Standards.**

Under FCC guidelines, an ETC applicant must demonstrate that it will satisfy applicable consumer protection and service quality standards.<sup>24</sup> The Company commits to satisfying all such applicable state and federal requirements related to consumer protection and service quality standards. Specifically, TX Mobile commits to comply with the Cellular Telecommunications and Internet Association's (CTIA) Consumer Code for Wireless Service. As a reseller, TX Mobile's service is of the same quality and reliability as that of its underlying carrier(s).

#### **I. Financial and Technical Capability**

TX Mobile is financially and technically capable of providing the Lifeline service in compliance with subpart E of Part 47 of the Code of Federal Regulations.<sup>25</sup> The Compliance Plan for TX Mobile (attached as Exhibit B and incorporated herein by reference) contains a demonstration of the Company's financial and technical capabilities.

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<sup>23</sup> See 47 C.F.R. § 54.202(a)(2).

<sup>24</sup> See *Lifeline and Link Up Reform Order* at page 209, revised § 54.202.

<sup>25</sup> See 47 C.F.R. § 54.202(a)(4).

**J. Terms and Conditions of Voice Telephony Service Plans  
Offered to Lifeline Subscribers**

The Compliance Plan for TX Mobile (attached as Exhibit B and incorporated herein by reference) contains detailed information describing the terms and conditions of all voice telephony service plans offered to Lifeline subscribers, including details on the number of minutes provided as part of the plan; additional charges, if any, for toll calls; and rates for each such plan.<sup>26</sup>

**K. Additional Carrier Obligations to Offer Lifeline**

The Company commits to: comply with all of the Commission's rules regarding carrier obligations to offer Lifeline, including de-enrollment and requirements related to publicizing Lifeline-services;<sup>27</sup> certify, as part of each request for reimbursement, that it is in compliance with all of the rules in Subpart E;<sup>28</sup> implement policies and procedures for ensuring its Lifeline subscribers are eligible to receive Lifeline services;<sup>29</sup> make and submit required annual certifications;<sup>30</sup> comply with all applicable recordkeeping requirements;<sup>31</sup> and comply with all annual reporting requirements.<sup>32</sup> Many of the details of how the Company plans to comply with

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<sup>26</sup> See 47 C.F.R. § 54.202(a)(5).

<sup>27</sup> See 47 C.F.R. § 54.405.

<sup>28</sup> See 47 C.F.R. § 54.407.

<sup>29</sup> See 47 C.F.R. § 54.410.

<sup>30</sup> See 47 C.F.R. § 54.416.

<sup>31</sup> See 47 C.F.R. § 54.417.

<sup>32</sup> See 47 C.F.R. § 54.422.



these requirements are contained in the Company's Compliance Plan (attached as Exhibit B and incorporated herein by reference).

#### **L. Public Interest**

Designation of TX Mobile as an ETC is in the public interest.<sup>33</sup> Designation of the Company as an ETC in the requested States will mean increased consumer choice of telecommunications services and products. In addition, TX Mobile has a unique way of doing business that provides diversity in the marketplace from which consumers can choose a carrier that satisfies their needs and desires. As a Lifeline services provider, the Company is determined to serve a traditionally underserved market that our Nation and this Commission recognize needs affordable, reliable telecommunications services and products.

Lifeline-services wireless carriers are particularly equipped to provide value to their customers because of the mobility afforded to wireless subscribers. And competition traditionally encourages service and product quality among competitors vying for subscribers.

### **III. ANTI-DRUG ABUSE CERTIFICATION**

The Company certifies that neither it nor any party to the application is subject to a denial of federal benefits, including Commission benefits, pursuant to section 5301 of the Anti-Drug Abuse Act of 1988 (21 USC 862).

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<sup>33</sup> See 47 C.F.R. § 54.202(b).

#### IV. CONCLUSION

Therefore, premises considered, TX Mobile respectfully requests Commission approval of its petition for designation as an ETC in the requested States.

Respectfully submitted,

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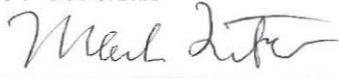
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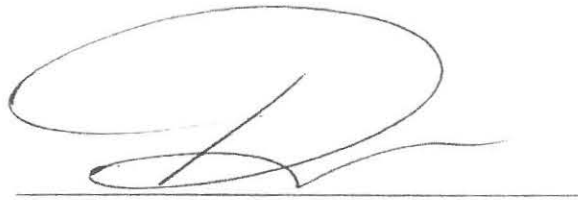
*Counsel for TX Mobile, LLC*

## DECLARATION

I, Hung Do, President of TX Mobile, LLC, do hereby affirm under penalty of perjury that I have reviewed all of the factual assertions set forth in the foregoing petition for ETC status and that all such statements made therein are true and correct to the best of my knowledge, information, and belief.

To the best of my knowledge, no party to this Petition, nor any of their officers, directors, or persons holding five percent or more of the outstanding stock of shares (voting or non-voting) as specified in Section 1.2002(b) of the Commission's rules are subject to denial of federal benefits, including Commission benefits, pursuant to Section 5301 of the Anti-Drug Abuse Act of 1988, 21 U.S.C. § 862.

Executed on November 21, 2012

A handwritten signature in black ink, consisting of a large, stylized capital 'D' followed by a horizontal line and a small flourish.

Hung Do, President